SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NO. 954

JOHN A. HUTTER, JR., et al,

Petitioners

vs.

CITY OF CHICAGO,

Respondent

PETITION FOR A WRIT OF CERTIORARI

The Illinois Supreme Court

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INDEX

	Page
Opinion Below.....	2
Jurisdiction.....	2
Question Presented.....	3
Statute Involved.....	3
Statement.....	4
Reasons For Granting The Writ In This Case.....	7

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CITY OF CHICAGO, ILLINOIS

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PETITION FOR A WRIT OF CERTIORARI

The Illinois Supreme Court

John A. Hutter, pro se and on behalf of John A. Hutter, Jr., et al., prays that a writ of certiorari issue to review the order of the Supreme Court of Illinois entered in the entitled case 42401 on September 25, 1969 and further

order on November 19, 1969 in which motion by petitioners for reconsideration of order denying petition for leave to appeal and to recall mandate was denied.

And also to review the order of the Appellate Court First District of Illinois No. 53386 entered June 16, 1969 denying petition for rehearing of order affirming the judgment order of the Circuit Court.

OPINION BELOW

The petition for leave to appeal to Illinois Supreme Court from the Appellate Court was denied and no opinion rendered.

The opinion of the Appellate Court, First District, affirming the order of the Circuit Court is reported in advance sheets: 110 Illinois Appellate 2d page 321.

JURISDICTION

The judgment of the Supreme Court of Illinois is dated and was entered on September 25, 1969 and a motion for rehearing denied on November 19, 1969.

The Judgment of the Appellate Court affirming judgment of Circuit Court and denying petition for rehearing was entered June 16, 1969.

The jurisdiction of this court is invoked under 28 USCP 1257(3).

QUESTION PRESENTED

The question presented here is whether the petitioners may be deprived of the use of their real property, contrary to law, without violating their rights under the United States Constitution amendment 14, pertaining to due process and equal treatment under the law.

A further question presented here is whether an action by a city demanding fines and that defendant be found guilty of violating ordinances is an action whereby the petitioners can be subject to double jeopardy without violating their constitutional rights under amendment 14 pertaining to due process.

STATUTE INVOLVED

The statutes (ordinances) involved are that portion of the municipal code of Chicago relating to buildings (a) chapter 78 Existing Buildings.

15-1 Every family unit shall have safe, unobstructed means of egress leading to safe and open space at ground.

15-4 In existing buildings where exits do not comply with the requirements of Chapter 67 and in which hazardous conditions exist because of the number, width, construction, or location of exits, the commissioner of buildings may order additional or rearrangement of existing exits to assure adequate safety of the occupants. (b) Chapter 67 Exit Requirements.

67-4 There shall not be less than two exits from every building, floor, space or room, except that one exit shall be permitted under the following conditions:

(e) In multiple dwellings, one exit door shall be permitted to a public corridor from a dwelling unit having not more than five habitable rooms and having an area not exceeding 1,000 square feet.

STATEMENT

Respondent, the City of Chicago, brought this suit to enforce the correction of alleged violations of the building code, namely in their complaint under 3b. "Provide additional means of egress for the following location. Provide additional means of egress, top floor all apartments."

Appellants, in answer, denied they were in violation of any provisions of building code.

As verified in opinion of Appellate Court building of appellants was constructed under permit issued by the Building Department in 1936. The pertinent facts are these:

The building is a three story corridor type building (called four story by court).

The opinion of Appellate Court states: "The transcript of the trial reveals that each of the apartments on the first, second, and third floors has

an entrance on a common or public corridor and that the corridor has a stairway at each end descending to the ground floor. Thus, as admitted by the City, the occupants on the first three floors have two effective and acceptable means of egress."

"Ingress and egress to the front apartment on the fourth floor is by means of a stairway leading from the third floor corridor to the fourth floor."

"Ingress and egress to the middle and rear apartments is by a stairway from the third floor corridor."

Thus the Appellate Court states that all of the requirements to qualify these apartments under 67-4(e) have been met.

SIMILARITIES OF ABOVE PENTHOUSE APARTMENTS WITH ALL OTHER APARTMENTS:

(a) All have a locked door on public corridor.

(b) All have as many locked inner doors as possible. This building is located in a changing neighborhood and tenants live in mortal fear of attack as outlined by Milton Eisenhower in his report. For example, a mob wanted to get at one of the tenants in this building, so they chopped thru two doors, broke a 6 foot square hole thru a wall, destroyed the furniture and splashed the walls with ink, paint, eggs and excrement. The police were called and arrested some. Our daughter, Marian Coy, Co-defendant, filed

a complaint but before the due date for the hearing, without notice, the culprits were discharged!!!

(c) All apartments have halls, stairs, which are private.

(d) All apartments at one time or another are occupied, singly, married couples, friends or strangers to cut down costs.

(e) All apartments have a single means of ingress or egress located in a public corridor.

(f) All have five rooms or less and do not have an area larger than 1,000 ft.

(2) Differences of above penthouse apartments from all other apartments.

(a) The two apartments, front, and middle rear, in question, differ from all other apartments in that they are safer for they have several optional (not required) exits that all other apartments do not have and are more secure from intruders. The middle part of rear apartment is really an all glass sun room with a bar.

(b) They have more than one level; the front apartment has three levels and the middle rear has two.

The roof of the building is over the third floor (fourth level). The entire north half is clear from front to

rear. Parts of the remaining roof level contains the second level of the front and middle rear apartment and the next higher level of the front apartment would be one level above the roof (fifth level). Both of these apartments have been in operation for over thirty years. The front one always occupied by petitioners, John and Clara Hutter.

The middle rear was occupied for a long time by a single man. But to share costs in this changing neighborhood, it has at times been occupied by two to three adults. At this writing it is occupied by <u>one</u> man.

REASONS FOR GRANTING THE WRIT IN THIS CASE

This cause may not be as dramatic as those referred to by Chief Justice Vinson in 1949 when he said "Those of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are in a sense prosecuting or defending class action, that you represent not only your clients but tremendously important principles upon which they are based, the plans, hopes and inspirations of a great many people throuout the country."

Perhaps the only difference the average person in the United States has from the Soviet Union when confronted with the tremendous power of his government, is the federal constitution, yet the gulf between those theoretical rights and their application is enormous.

Anyone seeking the protection of those rights is confronted with an overwhelming obstacle course.

The thrust of the cause at hand is whether any state can deprive a person of his rights to property contrary to law (statute or ordinance) when a court has weighed the evidence and found that person comes within the scope and protection of such ordinance. The Appellate Court, First District, of Illinois, did so find.

Most of the trial and most of the Appellate Court's decision is taken up with:

1. Discussions of non required exits which have no bearing on this case. Only the single legal exit to public corridor is involved.

2. A misinterpretation of cases cited. They were presented by petitioners in his brief to support their contention that after thirty years of following the statutes (ten years after introduction of current ordinances). The city should be estopped from violating those laws and depriving petitioners of their property rights.

As an attorney, John A. Hutter (who is appearing pro se) has great respect for all courts and is conscious of the difficulty and pressure under which the court in question, the Circuit Court of Cook County, Illinois, sitting in Chancery, hearing cases exclusively involving alleged building code violations, conducts its hearings.

However, in a time like the present, when all of our cherished institutions are being seriously challenged, it behooves all courts to conduct all proceeding in a manner above reproach.

While petitioner John A. Hutter and Clara Hutter, his wife, were absent from the state, a summons was left with a grammar school age granddaughter, at an address other than the residence of petitioners.

The due date for filing an answer had arrived before petitioners returned to the state and were informed of what took place. This is serious, for example, in this same court a few weeks earlier, the Honorable Frank H. Machala ordered a building razed to the ground. When the owner went to make some repairs on his building, it was gone. The newspapers had a field day with this. It turned out the man had never been served and knew nothing of the proceedings.

This court sitting in Chancery, the Court of conscience, closely resembles a traffic court. The day defendants were due to appear over one hundred cases were on call.

The average case, either with or without counsel, lasted about ten minutes. It seemed the court asked one of two questions - "How long will it take to vacate apartment?" or "How long will it take to get a contractor?"

6a. It appeared that the primary

function of the court was to convince the average small property owner that such ownership was a losing proposition compared with the situation at the time they were young and started a lifetime of saving so they would have a little security in their old age independent of charity or relief.

One old foreign speaking man who was hauled into court by a do-gooder neighborhood association for not painting his home, said he did not have the money, could not do it himself and liked his home the way it was. The court told him he was anti-social and perhaps the court should have him put away.

6b. The general idea was that the private property owner should get out and make way for Urban Renewal and Public Housing.

7. The court seemed amazed when defendants claimed that they were not in violation of any building department regulations. Witnesses had no place to sit. The court had a reporter but would not permit defendants to buy a transcript. In this case defendants had to engage a reporter who was from the same agency as the court's reporter and spend several hundred dollars to obtain a transcript. No place was provided for defendants reporter to sit and she had to stand throughout the hearing. The hearing was interrupted several times to hear other cases and defendant had to pay reporter to stand by. This was a severe burden upon defendants who are seventy two years of age and

ill, retired and on social security and property is their homestead.

The trial before His Honor Judge Frank H. Machala on February 27 was really final and complete. The complaining witness testified that all items except the egress of apartments in question had been complied with and that the doors of these apartments opened on the third floor public corridor.

8. Defendants testified that on the basis of complaining witnesses testimony, defendants apartments complied with Section 67-4(e) and the defendants should be discharged.

The court refused and said he would send out another inspector (one who was adept at evading questions).

Thus defendants were really put in double jeopardy.

9. In the second or repeat trial before the Honorable Alvin J. Kvistad, nearly a hundred pages of testimony transpired in an effort to undo the facts simply presented in previous trial.

When corporation counsel Sidney Gordon faltered, Judge Kvistad took over. There was so much harassment of John Hutter, counsel for defendants, that it proved almost impossible to represent the same evidence as in the trial before Judge Machala.

Federal questions were raised

as soon as they arose and were apparent.

These facts were presented to the Appellate Court by petitioners in their reply brief. They were also presented in oral argument before this court and the court was gently reminded that the conduct of the trial below and the courts finding violated the United States Constitution, amendment 14, relating to due process and equal treatment.

The Appellate court indicated that appellants would be secure in their rights.

On page 3 of petition for rehearing to Appellate court, petitioners state "The misinterpretation of Section 67-4 of the Municipal Code of Chicago, denies the defendants due process as provided by amendment 14 of the U.S. Constitution because it deprives defendants of their property and income unlawfully." Also reiterated on last page.

In petitioners petition to the Supreme Court of Illinois page 1, under iii "Statement of the points relied upon for reversal of judgment of Appellate Court, petitioners state - 1. "Defendant-appellants are deprived of their property, by this order, unlawfully without due process in violation of amendment 14 of the United States Constitution and the Constitution of the State of Illinois (also on page 5).

The Illinois Supreme Court refused to even consider the violation of petitioners constitutional rights.

Perhaps the turmoil within the court was a factor.

First, there were seven justices in that court, then two resigned because of scandal arising in Chicago. Then there were five but one died and then there were four - the minimum for a quorum. Of the four, three were graduates of Chicago politics who probably would hesitate to become involved.

It is frightening to think that only in this court does a citizen have protection of his constitutional rights when violated by a state or state court and that probably there is only one chance in twenty that this court will be able to consider his petition for a writ of certiorari.

The refusal of the court below to consider these federal questions makes necessary this petition for a writ of certiorari to secure redress of denial of constitutional rights.

This cause certainly must be indicative of a great class of residents of the United States whose rights under the federal constitution are abridged and denied and who do not have the knowledge or the means to secure and enforce its protection of their rights.

CONCLUSION

For the reasons stated above it is respectfully submitted that their petition should be granted.

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Attorney pro se and for the Appellants

Date_____